

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Aimee Faucett on April 26, 2006

DATED: May 31, 2006

On April 27, 2006, Carolyn Miller, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Aimee Faucett. Ms. Faucett was represented at this interview by her lawyer, Theresa McAteer, of McAteer & McAteer. Also present were Samer Rezkalia and Donielle Evans of KPMG, and Raymond Sarola of Willkie Farr & Gallagher LLP. The interview took place in a conference room on the 3rd floor of the City Administration Building in San Diego, and lasted approximately one and one-half hours.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Ms. Faucett, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

Ms. Miller informed Ms. Faucett that she represents the Audit Committee and not her personally, and, as a result, this interview is not covered by an attorney-client privilege between the Audit Committee and Ms. Faucett. She stated that information provided by Ms. Faucett may be made public in the Audit Committee's report, or provided to the government. Ms. Miller told Ms. Faucett that information she provides will not be shared with other witnesses until the Audit Committee's report was made public, and asked that she not disclose the substance of this interview to others who are yet to be interviewed.

Background

Ms. Miller asked Ms. Faucett to explain her educational and employment history. Ms. Faucett earned a Bachelor's degree from San Diego State University in public administration. She stated that she began courses for a Master's degree but did not complete the requirements for this degree.

Ms. Faucett started working as a Community Representative for Councilmember Judy McCarty in 1996. In this position, she was responsible for representing Councilmember McCarty to the community and acted as a liaison between the constituents and the Councilmember. Ms. Faucett stated that she worked specifically with community development, block grant, and land use issues. She explained that all of Councilmember McCarty's staff were "Community Representatives," but only four actually "went out into the community." Ms.

Faucett worked for Councilmember McCarty until Councilmember Jim Madaffer was inaugurated, at which point she became his Chief of Staff.

As Chief of Staff for Councilmember Madaffer, Ms. Faucett was responsible for overseeing policy issues and communicating with the Councilmember's staff, City employees, and constituents. Ms. Faucett explained that Councilmember Madaffer was staffed with a Committee Consultant for each committee that he chaired, which included Land Use and Housing, Natural Resources and Culture, and Neighborhood Services. Committee Consultants advised the Councilmember on issues coming to their respective committees and managed those committees' agenda and minutes. Ms. Faucett stated that under the City Manager form of government, Committee Chairpersons were nominated by the Mayor and confirmed by the Council.

Ms. Miller asked Ms. Faucett if Councilmember Madaffer sought out his nominations to chair committees. Ms. Faucett responded that Councilmember Madaffer was able to chair these committees because so many of the Council members were new at that time, but stated that the nominations were "political," and based on a Council member's issues. She explained that if the Mayor did not appoint a particular Council member to chair a committee, that Council member would be able to solicit support for a nomination from the Council. Ms. Faucett stated that during his tenure, Councilmember Madaffer had chaired most of the committees besides the Rules Committee. It used to be that the Mayor chaired the Rules Committee; this committee is currently chaired by the Council President.

Ms. Miller asked Ms. Faucett who else was on Councilmember Madaffer's "policy staff." Ms. Faucett jokingly responded that Councilmember Madaffer "was his own policy advisor." She stated that Councilmember Madaffer had two policy advisors on staff at any given time. At the present time, Donald Mullen and Jaymie Bradford were Councilmember Madaffer's policy staff. Ms. Faucett explained that sometimes other staff members would work on the issues typically handled by the policy staff, but usually the other staff members focused on their individual geographic areas. Councilmember Madaffer's community representatives would sometimes handle specific issues, but only if an issue was of particular interest to their respective communities. For example, Ms. Faucett stated that a community representative, Jay Wilson, used to handle the issue of "minidorms," but since this issue had become larger in scope, Ms. Bradford "took it over." Ms. Miller asked Ms. Faucett who was in charge of docket briefings, and Ms. Faucett responded that Ms. Bradford used to handle this issue but it was now handled by Mr. Mullen.

Ms. Faucett noted that it was her responsibility to supervise "Communications," which consisted of one staff member who handled the press and would occasionally respond to correspondence sent to Councilmember Madaffer. Mail would generally be opened by Councilmember Madaffer's executive assistant, who would then give it to Ms. Faucett. Ms. Faucett would route the mail to the appropriate staff member or sent it directly to Councilmember Madaffer. Ms. Faucett explained that Councilmember Madaffer had a personal assistant who handled his schedule and personal correspondence. Ms. Faucett stated that there were always eight individuals on Councilmember Madaffer's staff, and it was her responsibility to hire and/or fire staff members.

Ms. Miller asked Ms. Faucett if she had any interaction with constituents, and Ms. Faucett responded that she would interact with constituents regarding “her issues,” which included labor, public document requests, and the Chargers, among others. Ms. Miller asked if she had any interaction with other City agencies, and she responded that she had dealt with the City Manager (Michael Uberuaga) who she described as “friendly.” Ms. Faucett noted that staff were always welcome to call the City Manager with questions. Ms. Miller asked if any City department was particularly difficult to deal with, and Ms. Faucett responded that Development Services used to be difficult but had improved. She stated that when Councilmember Madaffer needed information, City agencies were usually responsive.

City Council Meetings

Ms. Miller asked Ms. Faucett to explain how Councilmember Madaffer was prepared for Council meetings. Ms. Faucett stated that docket materials arrived in Councilmember Madaffer’s office on Wednesdays, and other materials “trickled in” after that point. On Wednesdays, the staff would hold “docket meetings” to distribute assignments. If Councilmember Madaffer was present at one of these meetings, he would provide direction to the staff. On Thursdays, there were “docket briefings” which were run by Mr. Mullen, and attended by any staff member who had an issue that was on that week’s docket. Staff reports were due to Mr. Mullen by 4 p.m. on Fridays, and were then “cut and pasted” into a copy of that week’s agenda. Unassigned issues were handled by Mr. Mullen. The agenda containing all the staff reports was emailed to Councilmember Madaffer’s internal City account (not his public account) and he read it over the weekend. Councilmember Madaffer would either call staff members over the weekend with questions, or ask questions in Monday morning meetings.

Ms. Miller asked if Ms. Faucett had access to both Councilmember Madaffer’s public and internal e-mail accounts, and she replied that she did. She stated that she accessed his public account to respond to constituent emails or route them to other staff members, and that she only accessed his internal account to respond to document requests. She stated that Councilmember Madaffer also stored documents at his home.

Council meetings were held on Mondays and Tuesdays and there were separate agendas for each day. Monday Council meetings began at 2 p.m. and were dedicated to discussion items and financial issues. Tuesday Council meetings consisted of public comments, comments from Council members, and consent items. Ms. Faucett explained that during “public comment,” anyone can speak on any issue for up to three minutes. These public comments were “speeches,” not “debates,” and would continue for as long as it took for all people who wished to speak to have their three minutes. Council members would also make comments during Tuesday Council meetings, regarding upcoming events or other issues, such as when a department did not respond to a Council member’s request.

Ms. Miller asked Ms. Faucett how closed session meetings were held, and she responded that under the City’s “open sunshine” policy, a public comment session must precede closed session meetings. Ms. Faucett explained that this was always the City’s official policy, but it had recently become more prominent. She stated that the closed session agenda was made public seventy-two hours in advance of the meeting, pursuant to the Brown Act. Under the “sunshine ordinance,” this public agenda was required to contain a detailed description of items to be addressed in closed session.

Ms. Miller asked Ms. Faucett if she ever briefed Councilmember Madaffer on closed session issues. Ms. Faucett responded that she did not, and stated that staff were not allowed to know about the substance of closed session meetings. She explained that the Council members received pink packets in a confidential envelope which contained information about closed session meetings. Ms. Miller asked Ms. Faucett why certain issues were dealt with in closed session, and she responded that pending or potential litigation, personnel matters, and confidential financial matters were handled in closed session. Ms. Faucett stated that this process has become “more convoluted,” and noted that sometimes the public could influence the decision whether to discuss an issue in closed or open session. She stated that sometimes issues that should have been discussed in closed session were discussed in open session instead, but that it was never the case that issues were dealt with in closed session when they should have been discussed publicly. Ms. Faucett explained that an editorial or a press conference might suggest that certain items should not be in closed session, and this might influence the Council’s decision.

Blue Ribbon Committee

Ms. Faucett was familiar with the Blue Ribbon Committee (BRC) and described it as a group of people with financial backgrounds who were charged with reviewing “high-profile” financial issues. Ms. Faucett was aware that the BRC had issued a report, but did not recall whether Councilmember Madaffer had any meetings or asked for any materials regarding that report. Ms. McAteer stated that there were public requests during Council meetings for information regarding the BRC Report. Ms. Miller asked if Councilmember Madaffer had ever served on the Rules Committee, and Ms. Faucett responded that he had served on that Committee since he was elected; the Rules Committee consisted of the Deputy Mayor and the chairs of the other Council committees.

Ms. Miller asked Ms. Faucett if any of Councilmember Madaffer’s staff members were responsible for pension issues. Ms. Faucett responded that she was responsible for pension issues, but she did not focus on them because they were usually handled in closed session. She stated that Councilmember Madaffer “pretty much reviewed the pension issue on his own,” and noted that she never prepared any reports on this topic. Ms. Miller asked if she ever had interaction with officials from CERS. Ms. Faucett recalled a meeting with Lawrence Grissom (CERS Administrator) where she thought “it’s about time” that CERS finally explained their side of the pension issues. She stated that she routed emails about the pension system to Councilmember Madaffer’s public account for him to handle. These emails were usually from constituents who wanted information after hearing a media report about the pension system.

Meet & Confer

Ms. Faucett knew that Meet & Confer negotiations took place and provided Councilmember Madaffer with information from labor organizations, but did not brief Councilmember Madaffer on this issue to prepare for Council meetings because they were held in closed session. She noted that during the Meet & Confer time period, Council members were not supposed to have meetings on this topic outside of the formal Meet & Confer process. Ms. Faucett did not recall attending any meetings dealing with Meet & Confer issues. Ms. Faucett recalled that Councilmember Madaffer met with Daniel Kelley (Labor Relations Manager) and Cathy Lexin (Human Resources Manager), and that she had met with Ms. Lexin without

Councilmember Madaffer present. Ms. Faucett stated that she had met with Ms. Lexin because Ms. Lexin wanted to brief her on any labor disputes, grievances, or other labor issues that might become public. Ms. Faucett stated that Mr. Kelley and Ms. Lexin briefed all Council members during that time period, not only Councilmember Madaffer. Ms. Faucett knew that Mr. Kelley and Ms. Lexin made presentations to the Council in closed session, but did not recall them making presentations in open session.

MP-2

Ms. Miller asked Ms. Faucett to explain her understanding of MP-2. She did not recall her understanding at that time, but had since learned that MP-2 was a proposal to underfund the pension system and was “a mirror image of MP-1.” Ms. McAteer commented that public records demonstrated that MP-2 was an improvement over MP-1. Ms. Miller asked Ms. Faucett if there were any discussions in Councilmember Madaffer’s office about MP-2, and she responded that there were not. She clarified that information regarding MP-2 was given to Councilmember Madaffer, but she did not know the substance of this information. Ms. Faucett stated that this was the only issue that Councilmember Madaffer handled entirely on his own and she functioned only as a “filekeeper” regarding this issue. Ms. Miller asked Ms. Faucett if she knew Councilmember Madaffer’s view on MP-2, and she responded that she did not know any information regarding his views that was not public.

Shipione Allegations

Ms. Faucett was familiar with allegations concerning the pension system made by Diann Shipione (CERS Board Member) because Councilmember Madaffer had contacted Ms. Shipione in response to a letter she delivered to the Council. Ms. Faucett stated that she was not involved in this call, and was not aware of any action Councilmember Madaffer took as a result of the call. She stated that Ms. Shipione sent many letters, though she believed Councilmember Madaffer called in response to her first letter. Ms. Faucett attended Council meetings, but did not recall attending any meetings in which Ms. Shipione testified. If an issue that she was responsible for was being discussed, Ms. Faucett attended the Council meeting in person, otherwise she watched the meeting on television. She stated that 95% of the time there were staff present to assist Councilmember Madaffer, but she only attended the portions of Council meetings that related to her issues.

Wastewater Issues

Ms. Miller asked Ms. Faucett if she was familiar with the Cost of Service Study (COSS). Ms. Faucett responded that she was familiar with the term, and believed that this study examined the allocation of service charges as between residential and business users. Ms. Faucett stated that Councilmember Madaffer was interested in this issue because he chaired the Natural Resources and Culture committee (NR&C), which handled water and sewer issues. Ms. Faucett explained that he chaired the NR&C committee from 2001 until 2004, but she did not believe that bond offerings were ever sent to this committee.

Ms. Miller asked if the NR&C committee was responsible for setting sewer rates or if the entire Council decided this issue. Ms. Faucett remembered a discussion about this issue, in which Councilmember Madaffer was asked if he wanted this issue decided in Committee or in

Council, and he chose to send it to the full Council. Ms. Miller asked if she remembered any arguments with the Wastewater Department concerning rates. Ms. Faucett responded that she did not recall any such arguments, but noted that public organizations, specifically restaurant associations, had briefed her and Mr. Coffey (NR&C Committee Consultant) on why they thought the existing rates were fair. Ms. Faucett stated that the restaurant association specifically argued that restaurants should not be penalized when customers used their restrooms, and were concerned about being charged for others' use. Ms. Miller asked if Ms. Faucett recalled any meetings with other businesses, such as Kelco/ISP, concerning wastewater, and Ms. Faucett replied that she did not. Ms. Miller asked if she recalled any meetings with Doug Sain (Kelco Lobbyist), and she responded that he met with Councilmember Madaffer and Mr. Coffey. Ms. Faucett did not know the subject matter of these meetings, and noted that Mr. Coffey would have been responsible for preparing Councilmember Madaffer for these meetings since he was the NR&C Consultant. Ms. Miller asked what Mr. Coffey did after leaving the City, and Ms. Faucett responded that he moved to Atlanta, Georgia to pursue a master's degree.

Other Issues

Ms. Faucett stated that she did not receive bond disclosures and did not recall them being sent to Councilmember Madaffer's office. No staff were assigned to disclosure issues; Councilmember Madaffer handled this himself. Ms. Faucett was aware that the City issued bonds for the Ballpark financing but did not recall any information about this issuance coming to Councilmember Madaffer's office. She did not recall any water or sewer bond offerings.

Ms. Miller asked Ms. Faucett if she was familiar with the Legislative Officers' Retirement Plan (LORP) and she replied that she was. Ms. Faucett stated that she worked with Councilmember Madaffer on this issue and might have read a report on this topic. She did not know Councilmember Madaffer's view of LORP.

Ms. Miller asked Ms. Faucett if she ever went to the City Attorney's Office with questions, and she responded that she did. Ms. Faucett explained that the City Attorney's Office used to have a "Council Liaison," but no longer did, so she would contact the Government Relations representative if she did not get a timely response. Ms. Miller asked Ms. Faucett to describe the relationship between the Council and the City Attorney's Office. Ms. Faucett stated that "we don't trust the advice," and noted that clients should be able to call their lawyer and ask questions without fearing that information they discuss will be used against them. Ms. Faucett stated that she only contacts the City Attorney's Office regarding community projects. She noted that the City Attorney's Office had not responded to a number of her memoranda requesting opinions, and told her that these requests were outside the City Attorney's role under Charter section 40. Ms. Faucett opined that this was the result of "the person, not the structure."

Ms. Miller asked Ms. Faucett for her opinion of how the Strong Mayor form of government had been working. Ms. Faucett responded that it was too soon to tell since the change only occurred in January and people were still trying to figure out their roles. Ms. Faucett stated that the biggest challenge was that until an issue arises, such as a Mayoral veto, no one knows how the system will respond. Under the Strong Mayor form of government, the Mayor directed city staff and decided who was present for various meetings. Ms. Faucett

observed that the Mayor only attended meetings that he was interested in, otherwise he sent a liaison.

Ms. Miller asked Ms. Faucett if she was familiar with Presidential Leave benefits, and she responded that she had come to learn of these benefits later on. She explained that she received a letter from Carl DiMaio (phonetic), an executive with a local organization, that asked Councilmember Madaffer to rescind his vote in favor of these benefits. Ms. Faucett learned of this issue when she received this letter, but was unable to locate any additional information about Presidential Leave because this was handled in closed session. Ms. Miller asked Ms. Faucett if Councilmember Madaffer responded to that letter, and she stated that he did not. She explained that she had tried to acquire the closed session minutes because Councilmember Madaffer did not know what Mr. DiMaio was referencing. Ms. Faucett stated that she asked the City Attorney's Office for this information but was told that a Council vote was needed to release closed session materials. Ms. Faucett said she was frustrated by this process because information relating to these benefits had been leaked from closed session meetings in the first place.

Ms. Miller asked Ms. Faucett if she was familiar with the Purchase of Service Credit (PSC) program, and she responded that she had purchased service through this program herself. She stated that she did not deal with this as a Council issue, and noted that Councilmember Madaffer handled his personal benefits and other personal issues on his own.

Ms. Faucett was shown a memorandum from Councilmember Madaffer to the Mayor and Council dated September 19, 2002, regarding the 13th check (Exhibit 1). Ms. Faucett was familiar with the 13th check and stated that it went to retirees if there was a surplus in the retirement fund. She noted that she had prepared this memorandum and that her initials were located on the last page. Ms. Faucett stated that retirees had become dependent on the 13th check and had contacted Councilmember Madaffer's office because they heard that the check was not going to be provided that year. In response, Councilmember Madaffer sent this memorandum because he was concerned that the Council was not aware of issues relating to the 13th check. Ms. Faucett believed that the Council took action in response to this memorandum, but did not recall specifically the action taken. Ms. McAteer clarified that the 13th check was paid when there was a surplus in the retirement fund's earnings, not the fund itself.

Remediation

Ms. Miller asked Ms. Faucett if there was any additional information she wished to discuss, or any suggestions she would recommend for the Audit Committee's Report. Ms. Faucett stated that the City Attorney's Office needed to be held responsible for advising the Council. She stated that this was a daily issue and that Council members had been forced to seek outside counsel to get legal advice. Ms. Faucett believed this was a poor use of taxpayer funds because the Council already had the City Attorney's Office.

Ms. McAteer noted that there were "process issues" with bond offerings. She stated that the City Attorney's Office or the City Manager had set this process, but it needed to be better-defined because the Council members were not instructed on their responsibilities for bond offerings. Ms. McAteer noted that the Council was given a "limited presentation" by Bryan Cave regarding the Ballpark offering. She stated that Councilmember Madaffer knew to ask others questions regarding the information they gave him, but there was not a process that

was acceptable to the SEC for issuing bonds. Ms. McAteer suggested that the Audit Committee recommend a process for bond offerings because there was a “process deficiency.” Ms. Faucett stated that there were instances in closed session where Councilmember Madaffer was given information, but was not allowed to bring this information out of the closed session meeting to review.

W.F.G.

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EXHIBIT 1

City of San Diego
COUNCILMEMBER JIM MADAFFER
DISTRICT SEVEN

MEMORANDUM

M02-09-08 Please refer to this number when responding to this memo.

DATE: September 19, 2002

TO: Honorable Mayor and Councilmembers

FROM: Councilmember Jim Madaffer

SUBJECT: Retirees' 13th Check

It is my understanding that a Request for Council Action by the Retirement System regarding the retirees' 13th Check is ready to come to the City Council. Due to the seriousness of this issue, I request that this item be docketed with a full and complete report from the Retirement Administration as soon as possible.

The issuance of this check is of prime importance to our retirees. In years past, the 13th Check was distributed due to surpluses from earnings. Because of the depressed market, there is no surplus, therefore, the 13th Check needs to be administered from the reserve, which requires a vote of the City Council. Given the current and projected state of the market, potential exists that no surplus will be generated next year. It is for this reason a policy discussion on this issue should take place at the earliest possible date.

City of San Diego retirees' need to know what to expect, so that they may plan accordingly. The retirees most in need of this benefit are the elderly who retired many years ago and their allowance has been severely impacted by inflation. Recent figures obtained from the Retirement System show that of the 5,343 retirees, 334 receive less than \$350 per month, 304 receive between \$350 and \$499, and 1,094 receive between \$500 and \$999. For many of these retirees, the 13th Check is a large portion of their annual retirement allowance.

We owe it to our retirees', people who dedicated years of service to our City, to have a policy discussion and to take action on this issue.

CC: Michael T. Uberuaga, City Manager
Lawrence Grissom, Retirement Administrator
Nancy Acevedo, City of San Diego Retirees' Association

JM:af

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